

## PUEBLO OF LAGUNA

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TO: PUEBLO OF LAGUNA TRIBAL COUNCIL  
FR: Ron J. Solimon, Legal Assistant *RJS*  
RE: Anaconda Interim Agreement Meetings  
DA: Wednesday, December 30, 1981

Confidential Claim Retracted

Authorized by: SCDate: 6/25/13

At a meeting of the Pueblo of Laguna Council on December 14, 1981, a strategy was formulated with which to approach the problems associated with Anaconda Copper Company's cessation of operations at the Jackpile/Paguate mine site. The implementation of the strategy was assigned to the negotiating committee previously established by the Council, i. e., Governor Early, Councilman Robert Mooney, Councilman Philip Gaco, Ron Solimon (Acting Director of the Land & Minerals Resource Office and Legal Assistant), one local attorney, one Washington attorney, and Roland Johnson (Superintendent of the Bureau of Indian Affairs, Laguna Agency). For the record, Robert Mooney did not attend any of the meetings. Tim Sarracino, Treasurer for the Pueblo, attended the meeting in Denver on December 16, 1981. At the direction of Governor Early, the necessary contacts, meetings and communications were coordinated by Ron Solimon.

INITIAL MEETING WITH FEDERAL AGENCIES

The initial meeting between the Pueblo of Laguna (POL), the United States Geological Survey (USGS), the Bureau of Indian Affairs (BIA)-Laguna Agency, and the Field Solicitor's Office was held on December 15, 1981. The POL was represented by Governor Early, Philip Gaco, Ron Solimon, Bill Haltom (local Counsel), and Don Reynolds (Council of Energy Resource Tribes (CERT) consultant to the POL). The U. S. G. S. was represented by Marc Nelson and Dale Jones. The BIA-Laguna Agency was represented by Roland Johnson. The Field Solicitor's Office was represented by Tom O'Hare, Assistant Field Solicitor. The purpose of the meeting was to acquaint the various federal agency representatives with the Pueblo's strategy and to review the proposed Memorandum of Understanding with them. (It should be noted that the POL has continually made an effort to work closely with the above mentioned agencies. The effective and timely exercise of trust responsibility by said agencies has been a constant concern to the POL.) The U. S. G. S., in concert with the Assistant Field Solicitor advised the rest of us of their immediate concerns:

1. Mr. Nelson was of the opinion that Lease No. 8 (Gavilan Mesa) would remain in effect after the March 31, 1982, closure date;
2. Query whether or not the Company can remove its equipment without first obtaining permission from the U. S. G. S. in accordance with 25 CFR 171.24;

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3. Query what the Company intends to do with the ballast along the railroad spur;
4. With respect to the proposed Memorandum of Understanding, query whether or not the Pueblo can waive the rights, duties, and obligations of the BIA and U. S. G. S.;
5. Feel that the Environmental Protection Agency (EPA) and the Pueblo should not be included in the Memorandum of Understanding as having approval authority;
6. Feel that EPA has no jurisdiction in this matter;
7. Query whether or not the Superintendent of the Laguna Agency can bind other federal agencies by signing such a Memorandum of Understanding;
8. Query what effect the unitization agreement has on the other leases;
9. Feel that 25 CFR 177.9d and 30 CFR 231.41 apply to the Company in these circumstances;
10. The U. S. G. S. has not received a Notice of Intent to cease operations, and therefore, in spite of various statements issued by the Company to the press, the U. S. G. S. has not received legal notice as required by the regulations.

The Pueblo suggested that we meet with the same people the following day in order to give federal agency representatives a chance to review the Memorandum of Understanding and to provide input with respect to the Pueblo's strategy as presented to them.

#### SECOND MEETING WITH FEDERAL AGENCY REPRESENTATIVES

The second meeting with the same federal agencies was held on December 16, 1981. The purpose was to receive input from those agencies and attempt to reconcile any differences in the legal points inherent in the circumstances, e.g., jurisdictional authorities, interpretations of the lease provisions, and applicability of the various laws and regulations.

The U. S. G. S. and Field Solicitor advised the Pueblo that their conclusions was that the lease has expired but that the obligations of the company had not. It should be noted that this conclusion expressed during their meeting with Anaconda wherein the Pueblo was not present. The position of the U. S. G. S. and the Field Solicitor is ambiguous on its face and needs more analysis. They need to draw some definite conclusions so that the Pueblo can have an idea on the position of its trustee.

The USGS indicated that they would accomplish the following in the event that a letter of intent to cease operations was received by their office by Anaconda:

1. Would outline what the company had to do in the interim period before actual closure;
2. Advise the company that they had not met their responsibilities under the lease and that the lease does cease only as far as mining goes but the other provisions would remain in effect;
3. Advise the company what equipment would be required by the USGS to be retained on the property by Anaconda.

The Assistant Field Solicitor, Tom O'Hare, Esquire, advised the Pueblo that he could not recommend an amendment to the lease with regard to rental and that it was not the responsibility of the BIA to establish reasonable compensation for the use of the land after the expiration of the lease. I believe that this conclusion was drawn too hastily. The Assistant Field Solicitor further informed the Pueblo that he would not object to a side agreement for a term of years as between the Pueblo and the Company, but that he would not agree that an amendment to the lease was the appropriate legal vehicle.

Overall, the discussions with the USGS and the Field Solicitor were informative but inconclusive. It became increasingly evident that the Pueblo would have to formulate its own legal opinion and design its own tactical movement.

#### MEETING WITH ANACONDA COPPER COMPANY

As planned, a meeting was held between the Pueblo of Laguna Task Force and the Anaconda Company in Denver, Colorado, on December 18, 1981. The major points discussed at the meeting between the Pueblo and Anaconda were the following:

1. Termination date of the unitized leases;
2. Lease No. 8 (Gavilan Mesa);
3. Anaconda's draft letter;
4. Laguna's Proposed Memorandum of Understanding;
5. Rental Payments after March 31, 1982;
6. Submission Date of Reclamation Plan;

7. Surface and Right-of-Way Access by Laguna and its authorized representatives to the leased area for purposes of protore stockpile Evaluation;
8. Ownership and Evaluation of protore stockpiles;
9. Employment of Lagunas by the Company after the March 31, 1982, closure date;
10. Job development as between the Pueblo, the Company and the BIA;
11. Paquate Housing Rehabilitation;
12. Current level of mining activities;
13. Reroute construction of State Road 270 and the Underpass
14. Railroad Right-of-Way (Railroad Spur); and
15. Applicable laws and regulations.

Anaconda felt that all the leases would expire on March 31, 1982, except for Lease No. 8. Anaconda disagreed that the parties could amend the lease. They felt that the Proposed Memorandum of Understanding sought to define a lot of things that Anaconda couldn't agree to in the proposed format, but that they would like to discuss all items presented to them in an effort to reach agreement with the Pueblo. They felt that their original proposal to the Pueblo didn't take away any rights and that it did give certain assurances to the Pueblo that would be executed in good faith by the company. Mr. Colin Howard, Senior Counsel to the Company indicated that Anaconda was prepared to remain on the premises and would not seek to remove the railroad spur of the housing on the leased premises provided that some kind of agreement was reached between the Pueblo and the company. He indicated that they would prefer to not disturb the railroad spur or the building until a final determination has been made with respect to the obligations the Company would be obliged to carry-out as per the Environmental Impact Statement. Without something in writing the Company felt compelled, as per the applicable lease provisions, to remove the railroad spur and the housing within sixty (60) days of the expiration date of leases. They indicated that they would give notice to the USGS of their intent to remove all personal property belonging to Anaconda if no agreement was reached between the Pueblo and the Company. They indicated to us that their primary concerns stem from a recent lawsuit filed against the Kerr-McGee Company in which the plaintiffs alleged damages as a result of Kerr-McGee's failure to remove certain structures that allegedly caused health-related damages to the plaintiffs. Anaconda also felt that the May 11, 1938, Statute (52 Stat. 347, 25 USC 396a) was clear with regard to the term of the leases and any possible extensions. The Company felt that they were clearly precluded from any further mining activities after March 31, 1982, and that this should not be a concern to the Pueblo. Overall they felt that it was impossible to go on and continue to mine any further because of the 1938 statute.

Concerning the rental payments that were proposed by the Pueblo, Anaconda responded by saying that it did not see why the Pueblo would require rental payments when in fact no activity was taking place on the leased premises other than security and maintenance. They pointed-out that the rentals and advance royalties would not terminate with respect to Lease No. 8. Mr. Howard stated that without a quid pro quo Anaconda could not see any advantage in paying rent. They stated that they had made an enormous investment and were continuing to make an investment by employing Laguna people through March 31, 1982. They felt that they were only asking for a right to remain on the land and to maintain the equipment and provide security for the leased premises until such time as a final determination had been made with regard to the reclamation plan and thereafter the Environmental Impact Statement. Anaconda felt that from a legalistic standpoint, without access to perform those obligations of reclamation they would consider those obligations waived. Mr. Howard then re-emphasized the two points in the proposed Draft letter transmitted to Governor Early dated November 18, 1981 which were:

1. The Company would stay on the leased premises for purposes of providing security, and
2. The railroad spur and buildings would not be removed until such time as a final determination had been made with regard to Anaconda's obligations.

Anaconda summarized their position by restating that they were prepared to sign-off on something very similar to their proposed agreement but that they were not prepared to sign-off on the Memorandum of Understanding in the present format. This was not the last point of discussion on the rental payments as you will see later on in this report. Governor Early asked specifically for assurances on the submission date of the reclamation plan so that further planning could be accomplished by the Pueblo and the other federal agencies that were part of the Environmental Impact Statement Task Force. Mr. Marvin then assured Governor Early that the reclamation plan would be submitted to the Pueblo no later than March 31, 1982.

Discussion then focused on surface and right-of-way access to the leased premises as far as the Pueblo and its representatives were concerned for purposes of conducting independent tests on the protore stockpiles, i.e., economic evaluation of those stockpiles. Anaconda indicated that it wanted to be protected against any third party liability but that it otherwise didn't have any problems with the Pueblo's intentions and that they would be willing to permit this with indemnification against the Company's liability. Anaconda indicated that they had identified which dumps will go back into the pit and which ones will be used for backfill as well as those that will continue to be shipped to the mill. We informed the Company that CERT will be providing the economic valuation of the protore stockpiles through its contract with the Nuclear Assurances Corporation. (The Pueblo needs to adopt a resolution and send a letter to the Denver offices for purposes of obtaining technical assistance in this area). On the question of protore stockpile ownership, Anaconda felt that any stockpiles that were left on the premises after the expiration date of the leases would be the property of the Pueblo and that they had no

intentions of claiming ownership of same. They informed the Pueblo that any ore that had been removed from the premises that were at the mill would be processed and royalties would be paid to the Pueblo in accordance with the lease agreement.

Concerning the continued employment of Lagunas by Anaconda after the closure date, Anaconda assured us that they would have a letter in to the Governor in one month's time in which they would list those persons who would be retained by the Company after the closure date. They also indicated to us that they were providing counselling to all employees that were going to be leaving the employment of the Company and that these sessions were not negotiating sessions. The Company also felt that the union contract would continue and remain in force and effect until its expiration date May 20, 1982.

On the subject of job development Roland Johnson made reference to past discussions with the Company and asked whether or not the Company intended to provide any financial contribution toward this effort. The Company responded that it had determined that it would not make any financial contribution to this effort but would continue to provide assistance through the office of Jerry Bathke in order to line up additional funding for this tribal program. They indicated that Jerry Bathke had a couple of leads back in Washington and that he may be able to replace the lost funding for the Pueblo. However, the Company indicated that this was still open to discussion as between the Pueblo and the Company. With regard to scholarships they referenced the recent letter to Governor Early in which the Company indicated that it would continue providing scholarship funding to Laguna students through 1984.

On the subject of the Paguate housing rehabilitation, Anaconda indicated that they felt that this could not be separated from the EIS, but that they were nevertheless willing to talk with a committee appointed by the Pueblo. They indicated that they have three (3) men still working on this particular effort and that they would be the ones to carry out any rehabilitation, as identified by the committee, before March 31, 1982. They also indicated that Henry Analla was still on a retainer from Anaconda with respect to the identification of repairs that were needed at the Village of Paguate and that Basil Ward was still in charge of this particular effort. We indicated that as far as they knew Basil Ward had been instructed to stop doing any work at Paguate. Anaconda reassured us that the work was not discontinued and that it would be continued through March 31, 1982. We also asked whether or not there would be any blasting during the reclamation effort. Anaconda responded by saying that they anticipate blasting some of the high walls and that they may cause additional disturbances to the Village of Paguate during the reclamation of the mine site.

Anaconda informed us that they were presently mining from the underground operations sixty-six hundred tons per day and that seventy to eighty cars per day were being sent up to the mill. Of the ore sent up to the mill three-quarters of it came from the stockpiles and one-quarter comes from the underground operations. We asked about the possibility of doing any of the reclamation on a piecemeal basis in order to continue the employment of some individuals. Anaconda expressed its reluctance to do this until such time as

the EIS had been completed and that their obligations were clearly specified by the USGS and other federal agencies involved. However, they indicated that certain minor reclamation will be accomplished only with the consent of the USGS and that such efforts would basically be a windup of mining processes.

With regard to State Road 279 and the underpass that has previously been the subject of much discussion, the Company indicated that it would in no instance provide any funding for the construction of the underpass at the estimated 470,000 plus dollars.

At this point in the discussions Governor Early renewed our request for Anaconda's consideration of rental payments to the Pueblo after the expiration of the leases other than Lease No. 8. Mr. Marvin indicated that he would rather see all the pressure in the world be placed upon Anaconda and the USGS in order to get the reclamation plan approved and reclamation initiated. After a break during the negotiation proceedings, Anaconda made a counter-offer of \$50,000 per year for two years to be used by the Council as they saw fit. The contingency was that the Pueblo and Anaconda reach an agreement on access by the Company to the current leased premises. Anaconda stipulated that this was not a concession to the rental request made by the Pueblo representatives but they felt that this was a fair alternative to the Pueblo and that the USGS and the BIA wouldn't have to be involved in this particular proposal. Governor Early advised the Company that he would present the counter-offer to the Council.

#### OTHER ITEMS DISCUSSED WITH THE COMPANY

- The Pueblo asked for a clarification on what Anaconda meant by "standby positions". They stated that they did not mean positions for purposes of mining, hauling or milling activities.
- Anaconda felt that the federal regulations did not apply to the leases entered into after 1967, i.e., that the regulations were not retroactively applicable. (This is an item that needs further legal analysis).
- Anaconda offered to write a letter wherein it would irrevocably agree to terminate the leases in order to alleviate the Pueblo's apprehension of continued mining on any of the leases. (This also needs further legal analysis).
- The Pueblo advised Anaconda that we had been informed by the USGS that two (2) letters were needed from the Company: One concerning the removal of equipment; and one concerning the Company's intent to close operations.
- Anaconda indicated to the Pueblo that it does not consider the stockpiles on the leased premises as the Company's personal property.
- Anaconda will furnish a list of those laws and regulations which they felt were applicable.

- Anaconda estimated that approximately two (2) million tons of protore stockpiles would remain on the property after March 31, 1982.
- Anaconda indicated that the tool boxes assigned to mechanics would be given to said employees upon their being laid-off.

#### SUMMARY OF ANACONDA'S POSITION

The following summary of Anaconda's position is a composite of the notes and recollections of Ron Solimon and Bill Haltom.

If an agreement is not entered into between the Pueblo and Anaconda then:

1. All employees salaries will continue to March 31, 1982;
2. Anaconda will give notice of intent to remove all the railroad spur on the lease and the right-of-way; and the housing and buildings mentioned in the 1952 Lease. (Note: USGS previously indicated to the Pueblo that if this occurred, they would order the Company to stop such removal);
3. The buildings mentioned in the 1962 lease would stay;
4. Anaconda would provide the USGS with a letter as to when mining would cease (Note: presumably within the thirty (30) day required period);
5. The rentals and advance royalties would cease except for Lease No. 8 (Gavilan Mesa);
6. Anaconda will submit their reclamation plan;
7. Anaconda will not monitor unless allowed by the Pueblo and the USGS;
8. Anaconda will not maintain security;
9. Anaconda will wrap-up at NJ-45, i.e., close portals and other necessary work;
10. If milling stops today, then there would be no further shipment from the mine site;
11. The 1976 lease would continue and the unitization agreement is terminated;
12. There would be a final audit;
13. Anaconda would carry-out their obligations with regard to reclamation;



14. Anaconda would agree to presently leave the railroad and buildings on the 1952 lease if they were permitted to remove them later (Note: unless the Pueblo of Laguna wants them).

If the proposed agreement were signed, then:

1. Employees salaries would continue thru March 31, 1982;
2. Anaconda would not notify the USGS of intent to remove the building and the railroad sour;
3. Anaconda would maintain a small security force and would monitor the lease area;
4. Anaconda would give the USGS a letter within thirty (30) day of cessation of mining;
5. Anaconda would pay the Pueblo \$50,000/year for two (2) years in lieu of rental payments;
6. All rentals and royalties except on Lease No. 8 would stop;
7. The unitization agreement would stop;
8. Anaconda would submit their reclamation plan and full-fill their obligations.